



Verband der Auslandsbanken
in Deutschland e.V.

Association of Foreign Banks in Germany
AUSLÄNDISCHER BANKEN,
KAPITALANLAGEGESELLSCHAFTEN,
FINANZDIENSTLEISTUNGSINSTITUTE
UND REPRÄSENTANZEN

REPRESENTATION OF INTERESTS
OF FOREIGN BANKS,
INVESTMENT MANAGEMENT COMPANIES,
FINANCIAL SERVICES INSTITUTIONS
AND REPRESENTATIVE OFFICES

European Commission
Mr. Matthias Mors
Head of Unit
DG "Taxud" – Unit E1
Rue Montoyer, 59

B-1000 Brussels

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European Commission's Paper on the Common Corporate Consolidated Tax Base (CCCCTB) (CCCTB/WP057\doc\de)

Dear Mr. Mors

The Association of Foreign Banks represents the interest of currently 170 foreign banks, investment management companies and financial services institutions in Germany among them the largest financial institutions worldwide.

With regard to the first working group's documents on the Common Corporate Consolidated Tax Base (CCCTB) we thank you for the possibility to comment on your first proposals.

Firstly, we welcome the transparency of this European tax project as an exemplary way of a domestic tax planning and a law-making process. Furthermore we appreciate the proposals and principles of the European Commission's working group as a successful first step to harmonise the taxation of corporations in the EU. We welcome the main objectives of the avoidance of double taxation of transactions within group companies in the EU as well as the decrease of administrative costs by waiving of complicated transfer price rules between consolidated companies on the one hand and between head office and permanent establishments on the other hand. We encourage the European Commission to continue advancing in this way due to the importance of this project for our global active members and their business within the group in the EU.

Verband der Auslandsbanken
in Deutschland e.V.
Savignystraße 55
60325 Frankfurt am Main

TELEFON: +49 69 97 58 50-0
TELEFAX: +49 69 97 58 50-10
EMAIL: verband@vab.de
INTERNET: www.vab.de

BANKVERBINDUNG:
SEB AG Frankfurt am Main
BLZ: 500 101 11
KONTO NR.: 1000742700



Please find below our comments on the working document dated July 26, 2007:

1. Financial institutions as an important industry require special consideration (such as in the OECD guidelines dated December 2006) due to the different corporate structure using passported EEA branches rather than subsidiaries in the EU (see also number 6). Accounting along product lines for global trading is another important difference. Thus global trading of financial products is rather different to transactions of other companies. The taxation of global trading of financial instruments should be more in the focus of the European Commission.

The financial sector needs further considerations because of specific business lines, especially global trading, and the certain situation of branches using the European passport.

2. In general, there should be a choice to apply the CCCTB rules for the tax payer. Especially from a non EU-country point of view, a company should have the possibility not to apply the CCCTB system due to tax treaty reasons.

Thus the CCCTB system should be, in general, optional especially for companies from third countries, e.g. the U.S.A., Japan and Switzerland.

3. It is important that the CCCTB has to be applied from the outset. Consolidation for **all** income taxes must be guaranteed; e.g. in Germany there are currently two different tax bases, one for corporate tax and one for trade tax. The trade tax base is higher compared to the corporate tax due to certain additions according to the German Trade Tax Act for purely fiscal reasons.

Thus the CCCTB should be a consolidated tax base for any income tax. A two-step approach is not practical especially from a German trade tax point of view.

4. The working document proposes (in section 89) that a given subsidiary can only be a part of the tax group if at least 75 per cent of its voting rights are held by the qualifying parent company. We believe that the proposed threshold of 75 per cent is not very common in the Member States and not very practical. There are no reasons to exclude subsidiaries held of more than 50 per cent and less than 75 per cent of its voting rights by the qualifying parent company.

Thus the planned threshold should be reduced from currently “at least 75 per cent” to “more than 50 per cent”.



5. With regard to the consolidation methods (see section 112) there are two basic approaches for consolidation. Intra-group income and expenditure other than that related to depreciable assets can either be (1) ignored completely or (2) be included by each group company and netted off when the consolidation is carried out. Since the first alternative is more practical it should be preferred. The second alternative should be made available on an optional basis.

Intra-group income and expenditure should ideally be ignored completely.

6. With regard to the **endowment capital of branches** (permanent establishments) we request a European solution with the objective to reach a harmonised regulation. According to EG-Directives permanent establishments domiciled in the EEA are not obliged to report their own capital for their PE in another Member State from a banking regulatory point of view. For the purpose of profit determination an adequate endowment capital has to be allocated to the permanent establishment in order to ensure a comparable taxation to independent enterprises. It is vital to avoid any double taxation and to ensure an acceptance of the determined endowment capital by both tax authorities in the home as well as the host state. For this reason a harmonised regulation on a European level is necessary. For further proposals and assistance please contact us.

A European regulation for the determination of endowment capital of permanent establishments should be found soon to avoid double taxation for permanent establishments in the EU.

In case of any questions please do not hesitate and contact Markus Erb (phone 0049 69 97 58 500 or Email merb@vab.de).

Yours sincerely,

Jens Tolckmitt

Markus Erb